

127 FERC ¶ 61,278
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Cleco Power LLC

Docket No. OA08-36-002

ORDER DENYING REHEARING

(Issued June 18, 2009)

1. On September 18, 2008, the Commission issued an order¹ accepting with modifications Cleco Power LLC's (Cleco) proposed Open Access Transmission Tariff (OATT) containing its transmission planning process, as in compliance with the transmission planning principles outlined by the Commission in Order No. 890.² The Lafayette Utilities System and the Louisiana Energy and Power Authority (Lafayette/LEPA) filed a request for rehearing on two matters: (1) the cost allocation provisions for classification of upgrades; and (2) the regional participation provisions for designating affected third-party systems in its transmission studies. In this order, we deny the request for rehearing on both matters.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine principles and to clearly describe that process in a new attachment, (Attachment K) to their OATTs.

¹ *Cleco Power LLC*, 124 FERC ¶ 61,264 (2008) (Cleco Attachment K Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

3. The nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs.

4. Cleco's Order No. 890 compliance filing included proposed tariff provisions to satisfy the nine planning principles listed above. The Commission accepted Cleco's proposed tariff provisions, subject to modification. The Commission rejected certain arguments Lafayette/LEPA made in regard to tariff provisions relating to cost allocation and regional participation.

5. Cleco's cost allocation provisions are in sections 13.1 and 13.2. Section 13.1 governs the allocation of costs associated with reliability upgrades and section 13.2 governs the allocation of costs associated with economic upgrades. The costs of reliability upgrades, i.e., facilities that meet Cleco's planning criteria and that are approved by the Louisiana Commission, are recovered through existing rates. Expenditures for economic upgrades, i.e., facilities that are not required in order to meet the planning criteria or that are not approved by the Louisiana Commission, are recovered from the entity proposing the construction of the facilities, except when the Louisiana Commission or the Commission approves such expenditures for full recovery through existing rates. Cleco's OATT also provides that the stakeholder committee shall consider and may propose methods of allocating costs to any beneficiary of expenditures for economic upgrades other than the entity proposing the expenditure.

6. For regional participation, the Commission accepted Cleco's commitment to coordinate its planning activities with those of Southwest Power Pool, Southeast Reliability Council, and other regional reliability organizations for development and consistency of the models, databases, and assumptions used in making reliability determinations. Cleco stated that it will notify the owner of a directly interconnected facility if a transmission-related study produces results that could have a material adverse effect on that entity's system and that would result in a violation of Cleco's planning criteria if it were on Cleco's system. Such affected systems will be able to be fully involved through Cleco's planning process and in negotiations relating to the effects on the affected system of Cleco's construction projects. Cleco stated that it also participated in and coordinated joint planning efforts with the owners of interconnected transmission systems, sharing system plans to ensure that they are simultaneously feasible and that assumptions and data are consistent.

II. Requests for Rehearing

7. Lafayette/LEPA assert first that the Commission erred in approving Cleco's Attachment K cost allocation provisions, sections 13.1 (Reliability Upgrades) and 13.2 (Economic Upgrades). Cleco's Attachment K defines each as follows:

Reliability Upgrades: Transmission Provider provides transmission service completely within the state of Louisiana and is under the jurisdiction of the Louisiana Public Service Commission [(Louisiana Commission)].

Transmission System expenditures for new facilities that meet Transmission Provider's Planning Criteria and that are approved by the [Louisiana Commission] are incorporated into and recovered through existing rate structures consistent with [Louisiana Commission] and Commission policies.

Economic Upgrades: Expenditures, if any, on new facilities that are not required in order to meet the Transmission Provider's Planning Criteria or that are not approved by the [Louisiana Commission] shall be allocated to and recovered from the entity proposing the construction of the facilities for which such expenditures are made, except to the extent that the [Louisiana Commission] or the Commission approves such expenditures for incorporation into and full recovery through existing rate structures...The [joint planning committee] established pursuant to Section 5.6 of this Attachment K shall consider and may propose methods for allocating costs to any beneficiary of expenditures for economic upgrades other than the entity proposing such expenditure.³

8. Lafayette/LEPA state that these current provisions do not require Cleco to obtain the approval of the Louisiana Commission regarding how Cleco assigns upgrade costs. They say that there is the potential for abuse by Cleco because Cleco could avoid scrutiny by the Louisiana Commission and thereby assign upgrade costs however it pleases.

9. Second, Lafayette/LEPA take issue with the Commission's acceptance of regional participation provisions, specifically section 5.4, that they argue gives Cleco broad discretion in designating affected third-party systems in its transmission studies. Section 5.4 provides:

The owner of a directly interconnected facility will be notified as an affected system (Affected System) if studies performed by Transmission Provider related to reliability transmission projects, transmission service

³ See Cleco Power LLC, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 154A-154B, at sections 13.1 and 13.2.

requests, generator interconnection requests or economic study requests produce results that have a potentially adverse material effect on the transmission system of that entity and that would result in or produce a violation of Transmission Provider's Planning Criteria if the result were on Transmission Provider's Transmission System. Coordination with Affected Systems will be performed via conference calls, joint planning meetings and email. Affected Systems will be provided the opportunity to be fully involved throughout the entire Transmission Planning Process and in negotiations relating to the effects on the Affected System of the construction of any projects that resulted in the designation as an Affected System.⁴

Lafayette/LEPA argue that affected third parties would be unduly burdened if they have to protect their own interests via the mechanism provided for in Cleco's proposal. Lafayette/LEPA argue that section 5.4 puts unreasonable burdens on interconnected systems to review every Cleco transmission study, including studies related to customer-specific service requests, for potential adverse effects. They also assert that the Commission's finding on this issue was premised on the assumption that interconnected entities can inject themselves into the Cleco transmission study process, even though there is no basis for such an assumption.

III. Discussion

10. With regard to Lafayette/LEPA's argument about classification of upgrades and the resulting cost allocation, we deny rehearing. It is appropriate for the transmission provider to have reasonable discretion over how it classifies an upgrade. Under Cleco's Attachment K, failure to seek approval of the Louisiana Commission results in the proponent of an upgrade having to pay for the upgrade. That applies equally to Cleco and its customers. Section 13.1 is clear that approval from the Louisiana Commission is necessary to categorize an upgrade as a reliability upgrade and thereby recover the costs of that upgrade through existing rate structures. If the upgrade is not submitted for Louisiana Commission approval, section 13.2 specifically provides that the costs of the upgrade will be assigned to the entity proposing construction of the facilities. Therefore, if Cleco proposes the project, and does not submit it for state approval, Cleco will pay for it.

11. If the proposing entity or other stakeholder believes that Cleco inappropriately classified a particular upgrade or failed to seek Louisiana Commission approval for a certain upgrade, whether that upgrade was proposed by Cleco or another proposing entity, in an attempt to affect the allocation of the costs, that entity or stakeholder may

⁴ Cleco Power LLC, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 147, at section 5.4.

use the dispute resolution provisions of Attachment K to resolve its issue. The proposing entity or other stakeholder could also file a complaint with the appropriate regulatory body raising that concern. What regulatory body has jurisdiction to entertain such a dispute would depend on the nature of the issue raised. For example, if Cleco has identified a project that meets its planning criteria, yet Cleco chooses not to propose the facility, a network customer could file a complaint with the Commission to investigate whether Cleco has satisfied its obligation under section 28.2 of its OATT to plan, construct, operate and maintain its system to provide the network customer with service. Similarly, a retail customer may have the right to initiate a proceeding at the Louisiana Commission to consider whether Cleco has abrogated state requirements to provide adequate service to its customers. We therefore deny Lafayette/LEPA's request for rehearing on this issue.

12. Second, we also deny Lafayette/LEPA's request for rehearing of Cleco's regional participation provisions in section 5.4 of Cleco's Attachment K. Lafayette/LEPA argue that this provision puts unreasonable burdens on interconnected systems to review not only the Cleco transmission planning studies, but also studies related to every customer-specific service request for potential adverse effects. We disagree that reviewing planning-related information to ensure that one's own interest is preserved is an unreasonable burden. Cleco has committed to notifying an affected system during the transmission study if Cleco discovers the potential for an adverse effect in its transmission planning process. Cleco has revised these regional participation provisions to provide more detail, as we directed.⁵

13. If a customer disagrees with Cleco's determination of whether a system is affected, that customer can use the dispute resolution provisions of Attachment K to resolve its issue. Additionally, the dispute resolution provisions can be used if an affected party believes that Cleco is not notifying affected parties, as Cleco has committed to do.⁶ We find that these opportunities are adequate for interconnected entities to involve themselves in Cleco's transmission planning process. Therefore, we deny rehearing of this issue.

⁵ These revised provisions will be addressed in the order in Docket No. OA08-32-003 being issued concurrently with this order.

⁶ Cleco, Jan. 22, 2008 Answer at 9. Lafayette/LEPA can take notice of transmission service requests submitted to Cleco and monitor the progress of those requests through Cleco's Open Access Same-Time Information System.

The Commission orders:

Lafayette/LEPA's requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.